

AMENDMENT B
(37 C.F.R. 1.116)

IN THE CLAIMS:

Please add new Claims 31-46. These new claims are attached herein on separate sheets and correspond to the Examiner's indication of allowability for Claims 3 and 5-11.

Please cancel Claims 1-11 without ~~disclaimer~~ to their content and without prejudice to their subsequent reintroduction into this or a future patent application.

Please amend Claim 18 and 24. A marked-up version is attached herein on a separate sheet and a clean version is attached herein on a separate sheet.

REMARKS

Pursuant to 37 C.F.R. §1.111, reconsideration of the instant application, as amended herewith, is respectfully requested. Entry of the amendment is requested.

Claims 12-46 are presently pending before the Office. Claims 12-30 have already been allowed and Claims 31-46 reflect rewritten claims which the Examiner's indicated would be allowed if rewritten in independent form. Claims 1-11 have been canceled. No new matter has been added by this amendment. Support for the amendment can be found throughout the specification as originally filed. Applicant is not intending in any manner to narrow the scope of the originally filed claims.

The Examiner's Action mailed June 18, 2002 (Paper No. 2) and the references cited therein have been carefully studied by Applicant and the undersigned counsel. The amendments appearing herein and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is believed to be in condition for allowance.

Although Applicant respectfully disagrees with the Examiner because the Wolf reference is a tool across which a wooden leveling board is moved to produce a level finish surface. It cannot attach to weldment plates, which are located at intermediate predetermined locations to provide for surfaces to which structural support beams can be welded. The Wolf device is primarily a temporary device for leveling and finishing a cement pour between perimeter forms such as cast segments of concrete are poured or when driveways, patios and walkways are

poured. Rubber protective sleeves are used, the lower portion is fixed to the forms wooden backing and the device is configured so that the leveling bar (generally a long piece of angle iron) can be removed for subsequent use.

Further, the device is adjusted to be a length substantially equal to the thickness of the pour form. while the device of the present invention is not. The device of the present invention has a length "substantially equal to the thickness of the concrete wall minus a dimension of the weldment plate extending in a direction of the thickness of the concrete wall." In other words, the present invention is completely buried in the concrete pour and is never to be retrieved again, while at least a portion of the Wolf device is retrievable. The Examiner is apparently construing the leveling bars of Wolf as equivalent to "weldment plate." The weldment plates are located within pre-engineered locations in the wall sections to be poured so that when the wall is raised in the upstanding location, building structural members such as floor joist steel beam can be welded to the surface of the weldment plates.

The angle iron portions of the Wolf device cannot be used to support building structural members as the angle iron members are along a perimeter, not pre-engineered locations for welding building structural members. They also are not designed to hold the load of a building structural member. In fact, the disclosure teaches cement casting where the form is removed and the angle iron leveling bars are removed. The present inventive device is embedded permanently in the poured concrete wall section. Once the device is clipped or otherwise attached to the weldment plate, it is self-supporting. A user need not hammer the device into a form as the weldment plate is rectangular or square shape and the device supporting the weldment plate can free stand like table legs. No bracing is required as needed in the Wolf reference.

Therefore, there can be no anticipation of Claim 1, as amended, under Section 102(b) as the Wolf device leveling bars are not weldment plates as understood in the industry and as contemplated within the art of the invention. Further, the angle iron leveling bars are intended to be removed from the finished concrete casting while the weldment plate is permanently embedded together with the inventive device, wherein the weldment plate serves as a pre-engineered plate to which building structural members are welded after elevating the wall section in place.

In addition, there can be no teaching from the Wolf reference as the only teachings in Wolf are expressly directed to concrete castings for which after the leveling is done, the forms are removed along with the **perimeter non-structural members** (angle iron leveling bars or leveling guides). There is no suggestion to use the device of Wolf in a building structure wall section. Building walls can be massive, with several feet of length and height. The device of Wolf is not intended and cannot be used in such building walls.

In a recent case before the Circuit Court of Appeals for the Federal Circuit decided on May 13, 2002, the court found that a prior art reference will NOT be assumed to inherently contain claimed property because it discloses same structure. The plaintiff in the case was attempting to have the court declare defendant's patent invalid as obvious over a prior art patent that disclosed the same structure but did not specifically disclose a 2 percent limitation for reduction of a reflection contribution. Plaintiff argued that the limitation was inherently there because the basic structure was the same. Plaintiff had not shown that the prior art taught, suggested or motivated the reduction to about 2 percent. Crown Operations International Ltd. v. Solutia Inc., 62 USPQ2d 1917 (Fed. Cir. 2002).

In the instant application, the Examiner has not shown or demonstrated how the reference teaches the a device which is not the same thickness of the poured slab, is permanent and is attached to weldment plate understood in the trade to be able to support building structural members such as steel floor joist. The extremely liberal interpretation raised by the Examiner is contrary to the direction of the Circuit Court of Appeals for the Federal Circuit.

Nevertheless, in order to advance the case to allowance, Applicant cancels Claims 1-11 and presents new Claims 31- 46. Claims 31-36 reflect the indication of allowability of former Claim 3. Claims 37-46 reflect the indication of allowability of former Claim 9.

CONCLUSION

Even though the initial claims in this important patent application were drawn to a new, useful and nonobvious invention, they have now been amended to increase their specificity of language.

A Notice of Allowance is earnestly solicited.



If the Examiner is willing to reconsider allowing Claims 1-11, he is requested to contact the undersigned so that Applicant need not be faced with the unnecessary added expense of filing a divisional application for the canceled claims.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 538-3800 would be appreciated.

Very respectfully,

Dated: 7/11/02



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MARKED-UP VERSION OF AMENDED CLAIMS

18. (Amended) The device according to Claim 17, wherein said plurality of fingers comprises at least [three equally spaced] two fingers with portions that snap behind the head portion of the weldment projection.

24. (Amended) The device according to Claim 23, wherein said plurality of fingers comprises at least [three equally spaced] two fingers with portions that snap behind the head portion of the weldment projection.